

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-13894

<p>FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT September 23, 2005 THOMAS K. KAHN CLERK</p>

D. C. Docket No. 03-20551-CR-UUB

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JACKY BERNARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(September 23, 2005)

Before TJOFLAT and BARKETT, Circuit Judges and FULLER*, Chief District Judge.

PER CURIAM:

Having reviewed the evidence and considered argument of counsel, we find

*Honorable Mark E. Fuller, United States Chief District Judge for the Middle District of Alabama, sitting by designation.

no reversible error as to the conviction in this case. Accordingly, Jacky Bernard's conviction is affirmed. However, the government concedes there was error in sentencing and accordingly we vacate the sentence and remand for resentencing in light of United States v. Booker, 543 U.S. ___, 125 S. Ct. 738 (2005).

AFFIRMED IN PART, VACATED AND REMANDED IN PART.